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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P. O. Box 272400
Fort Collins, CO 80527--2400

In re Application of	:	
Richardson	:	
Application No. 09/923,045	:	DECISION GRANTING
Filed: August 6, 2001	:	PETITION
Attorney Docket No. 10990318-2	:	

This is a decision on the petition filed October 12, 2001, to establish that Figure 13 was part of the originally filed application.

On August 6, 2001, the application was filed.

On August 27, 2001, the Office of Initial Patent Examination mailed a "Notice to File Corrected Application Papers" stating that the application had been accorded a filing date of August 6, 2001, and advising applicants that Figure 13 described in the specification appeared to have been omitted.

In response, the present petition was filed alleging that Figure 13 was deposited on August 6, 2001. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "Drawings 10 Sheet(s) (FIGS. 1A-13)" on August 6, 2001.¹ Petitioner has also submitted a copy of the missing documentation- Figure 13.

Upon review of the record, Figure 13, deposited on August 6, 2001, has not been located. However, the evidence is convincing that the application papers deposited on August 6, 2001, included Figure 13, and that Figure 13 was subsequently misplaced in the PTO.

In view of the above, the petition is **granted**. The copy of Figure 13 submitted with the petition will be entered.

The petition fee will be credited to deposit account no. 08-2025.


On future transmittal sheets for continuation applications, as an additional safeguard, applicant may wish to include the language,

¹ Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

"The entire disclosure of the prior application, from which an oath or declaration is supplied, is considered part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference." The incorporation by reference provision is intended to only be relied upon when a portion of an application has been inadvertently omitted from an application, and not as a substitute for filing required portions of an application.²

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of August 6, 2001, using the application papers filed on August 6, 2001 and the copy of Figure 13 filed on August 6, 2001. The Office of Initial Patent Examination will also consider the substitute drawings filed with the petition to determine if they comply with 37 CFR 1.84.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (703) 306-5683.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

² MPEP 201.06(c) states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied)